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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,716	11/15/2005	Thomas Sagel	BAC011-353	6838

24131 7590 11/30/2010
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EXAMINER	
ING, MATTHEW W	

ART UNIT	PAPER NUMBER
3637	

MAIL DATE	DELIVERY MODE
11/30/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/534,716	SAGEL ET AL.	
	Examiner	Art Unit	
	MATTHEW W. ING	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 October 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *31-45* is/are pending in the application.

4a) Of the above claim(s) *34-45* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *31 and 32* is/are rejected.

7)☒ Claim(s) *33* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/4/10 has been entered.

Election/Restrictions

2. Claims 35-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/23/09. The restriction requirement being made FINAL in the office action mailed May 11, 2009.

3. Claim 34 has also been withdrawn from consideration, since it reads upon non-elected species 2, and since it appears to be substantially the same as now-cancelled claim 19 (which was also withdrawn from consideration as being drawn to a non-elected species).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fulterer (6,199,966) in view of Cirocco (5,951,132).

6. Fulterer teach(es) the structure substantially as claimed, including a rigid frame having an upper segment (Fig. 9) attached to an upper rail (28) and a lower segment (16) attached (via, e.g.,

resting of 16 upon 32) to a lower rail (4); an upper rail (28) and a lower rail (4); a furniture front (Fig. 9) is affixed to the rigid frame; a height adjustment screw (15) engaged between the lower frame segment (16) and the lower rail (4); said height-adjustment screw locking said lower segment to said lower rail (col. 7, lines 47-50) via locking means (37, which is engaged by 33), and setting a spacing distance (i.e., distance between rear ends of 16 & 4) between said lower segment (16) & said lower rail (4) for vertically setting a position of said rigid frame between said upper rail & said lower rail (col. 7, lines 52-55); wherein turning said height-adjustment screw (15) causes a vertical adjustment of said rigid frame between said upper (28) & lower (4) rails without unlocking an attachment (via 33 & 37) between said lower segment of said rigid frame & said lower rail.

7. The only difference between Fulterer and the invention as claimed is that Fulterer fail(s) to teach two height adjustment screws disposed at a spacing distance from one another along the lower rail; and a spring biased locking latch slidably engaged against the screws in the lower frame segment when in the locked condition for locking the rigid frame between the upper rail and the lower rail.

8. Cirocco, however, teaches a locking latch (122) for locking one frame segment (20b) to an adjacent frame segment (30), said locking latch being spring biased & slidably engaged against a protrusion (132) in said adjacent frame segment (30) when in the locked condition. Additionally, regarding the quantity & locations of the height adjustment screws, it is noted that mere rearrangement & duplication of the essential working parts of a device has been held to involve only routine skill in the art; see MPEP 2144.04 (VI).

9. It would have been obvious to one of ordinary skill in the art to include a second height adjustment screw to the lower rail of Fulterer, and to space said second height adjustment screw along said rail apart from the first height-adjustment screw, in order to provide additional structural support to an adjacent portion of the lower frame segment thereof; and to add a latch, as taught by Cirocco, to the structure of Fulterer, in order to provide a stronger connection between the lower rail & lower frame segment when said frame is not in use, via engagement between said latch & the screws of Fulterer, thereby providing the structure substantially as claimed.

10. Regarding claim 32, Fulterer teaches a height adjustment screw (15) screwed (col. 6, lines 52-54) into the lower rail (4); said screw having a head (cylindrical portion of 15 between 32 & 34) which extends through bottom the lower rail, a support surface (32) engaging the bottom side of the lower frame segment (16), and a recess (i.e., space between outer surface of the head & bottom surface of 32) between said head & support surface. Additionally, Cirocco teaches a spring biased locking latch (122) which engages a protrusion (132) at a location spaced from a top surface thereof (see Fig. 12). Additionally, since the topmost portion (33) of the screw (15) of Fulterer already engages the locking portion (37) thereof, and the support surface (32) of said screw lacks any significant spacing between its edges & the inner surfaces of the lower rail (see Fig. 13), it would appear that the head (cylindrical portion of 15 between 32 & 34) of said screw provides the only available area which could be engaged by a spring-biased latch of the type taught by Cirocco. Hence, it is reasonable to conclude that modifying the structure of Fulterer in view of Cirocco would obviously produce a structure wherein a spring-biased locking

latch engaged the recess of the screw between a head and a bottom side of an elongated structure when said locking latch was in the locked position.

Allowable Subject Matter

11. Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments filed 11/22/10 have been fully considered but they are not persuasive.

13. Applicant argues, with regard to the Fulterer reference, that "The bolt [of Fulterer] does not and cannot lock the frame to the rail." This is not found persuasive, because Fulterer specifically states that the top portion (33) of the height-adjustment screw (15) thereof is "lockingly engaged in the recessed groove 37." When thus engaged, Item 33 (and hence screw 15) at least restricts movement by the lower frame segment (16) in a horizontal direction.

14. Applicant additionally argues, with regard to the Cirocco reference, that "The locking latch of Cirocco does not translationally (i.e., vertically) 'lock' a screw head to a frame so that turning of the screw would adjust a distance of the frame from another structure (i.e., a lower rail)." This is not found persuasive, for the following reasons. First, Cirocco is not viewed as teaching a height-adjustment screw; rather, Cirocco is merely cited for teaching, broadly, the inclusion of a spring-biased latch (122) upon a linearly-movable component (20b) to lock said component to an adjacent component (30) via engagement between said latch and a protruded member (132) of some type. It is noted that one cannot show nonobviousness by attacking

references individually where the rejections are based on combinations of references. Second, the feature upon which applicant relies (i.e., a latch which vertically locks a screw head to a frame) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW W. ING whose telephone number is (571)272-6536. The examiner can normally be reached on Monday through Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell M. Jayne can be reached on (571) 272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darnell M Jayne/
Supervisory Patent Examiner, Art Unit 3637

MWI
11/22/10